

1
2
3
4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8 VECTREN COMMUNICATION SERVICES,
9 INC., an Indiana corporation,

No. C 08-3137 SI

10 Plaintiff,

**ORDER GRANTING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

11 v.

12 CITY OF ALAMEDA, acting by and through
Alameda Power & Telecom,

13 Defendant.
14 _____/

15 Plaintiff has moved for reconsideration of the portion of the Court's August 18, 2009 summary
16 judgment order in which the Court found as a matter of law that defendant did not have a duty under the
17 2004 Installment Sale Agreement ("ISA") or the implied covenant of good faith and fair dealing to
18 consider and add voice services. After review of the parties' papers, the Court agrees with plaintiff that
19 summary judgment on this issue was not proper, as there are triable issues of fact as to the parties' intent
20 regarding whether § 6.2 or § 6.3 of the ISA governs the improvement of adding voice services. The
21 Court also agrees with plaintiff that if § 6.2 governs, the City was required to exercise its discretion
22 under § 6.2 (to make additions, modifications and improvements to the Telecom system) in good faith,
23 *see Locke v. Warner Bros. Inc.*, 57 Cal. App. 4th 354, 366-67 (1997), and that this question of fact is
24 not suitable for summary judgment.

25 The Court also finds that the motion for reconsideration is procedurally proper. The distinctions
26 raised by plaintiff in the motion for reconsideration were not addressed in the summary judgment
27 briefing, and only first raised at oral argument. The Court has benefitted from a fuller discussion of this
28 matter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly, the Court GRANTS plaintiff's motion for reconsideration. (Docket No. 89).

IT IS SO ORDERED.

Dated: December 28, 2009



SUSAN ILLSTON
United States District Judge